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Before the  
FEDERAL COMMUNICATIONS COMMISSION NOV 5 1996  
Washington, DC 20554

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Policy and Rules Concerning the Interstate, ) CC Docket No. 96-61  
Interexchange Marketplace )  
 )  
Implementation of Section 254(g) of the )  
Communications Act of 1934, as amended )

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U S WEST, INC.'S REPLY TO OPPOSITIONS TO PETITION  
FOR CLARIFICATION, OR, IN THE ALTERNATIVE, RECONSIDERATION

U S WEST, Inc. (or "U S WEST") hereby respectfully submits this Reply to  
Oppositions to its Petition for Clarification, or, in the Alternative, Reconsideration  
in the above-captioned docket.<sup>1</sup>

In its Petition, U S WEST sought very limited reconsideration or clarification  
of the rate integration rules established by the Federal Communications  
Commission ("Commission"). Specifically, U S WEST has established two totally  
separate carriers, each of which provides or will provide long distance service. The  
first of these carriers, U S WEST Communications Group, Inc. (or "U S WEST  
Communications Group"), is the traditional landline local exchange carrier in the 14

<sup>1</sup> U S WEST, Inc.'s Petition for Clarification, or, in the Alternative, Reconsideration,  
filed Sep. 19, 1996 ("Petition"). Comments and oppositions were filed on Oct. 21,  
1996 by AT&T Corp. ("AT&T"); The Commonwealth of the Northern Mariana  
Islands ("Mariana"); MCI Telecommunications Corporation ("MCI").

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state U S WEST region. The second of these carriers, U S WEST Media Group, Inc. (or "U S WEST Media Group"), is a totally separate company organized to provide, among other things, common carrier services (including interexchange services) in other areas. The two carriers have been established to operate independently, to sell different products under different brand names, and to target different sets of customers. As documented in detail in the U S WEST Petition, because of the targeted stock plan under which investors can choose to invest in either the U S WEST Media Group or the U S WEST Communications Group, the two companies are perforce operated quite independently. Obviously these separate companies were not established for the purpose of evading the rate integration provisions of the Telecommunications Act of 1996<sup>2</sup> or the Commission's rules.<sup>3</sup> As no useful purpose would be served by applying the rate integration rules to these two companies, U S WEST requested that the Commission take appropriate action to specify that the rate integration rules did not apply to subsidiaries of a holding company which are ultimately responsible to different groups of investors pursuant to a targeted stock structure. GTE Service Corporation ("GTE") filed a similar Petition for Reconsideration.<sup>4</sup>

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<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Telecommunications Act" or "Act").

<sup>3</sup> In fact, the regulatory environments for in-region and out-of-region interexchange services are themselves likely to be quite different for some time.

<sup>4</sup> GTE Petition for Reconsideration and Clarification, filed Sep. 16, 1996.

Three comments were filed dealing with the U S WEST Petition. MCI agrees that the rate integration rules should not apply to separate carrier affiliates unless the affiliates were established in order to evade the rate integration obligations.<sup>5</sup> At the least, MCI suggests that affiliates which were in existence for some period of time prior to adoption of the rate integration rules or statute be allowed “to continue to provide services at rates that reflect their unique historic and other costs,” or the Commission “should allow for an appropriate transitional period [of] three years[.]”<sup>6</sup> While either approach suggested by MCI would appropriately deal with the particular circumstances of U S WEST Communications Group and U S WEST Media Group, even MCI’s limited suggestions go further than is necessary to recognize U S WEST’s unique circumstances.

On the other hand, AT&T and Mariana oppose U S WEST’s Petition. AT&T’s opposition is perfunctory, based on the premise that it would be unfair to AT&T if carriers were to “be permitted to establish separate subsidiaries to avoid the rate integration requirements.”<sup>7</sup> AT&T’s perceived unfairness is based on its claim that “regional” carriers could use separate subsidiaries to effectuate a type of “bundling” which AT&T cannot utilize.<sup>8</sup> Whatever the merits of the AT&T position in the abstract (and it does seem somewhat questionable), it has no relevance to the circumstances of U S WEST’s targeted stock structure.

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<sup>5</sup> MCI at 2.

<sup>6</sup> Id. at 3.

<sup>7</sup> AT&T at 1.

<sup>8</sup> Id. at 2.

Mariana's opposition is primarily leveled at GTE, but its analysis sweeps in U S WEST as well. In essence, Mariana contends that permitting carrier subsidiaries of a non-carrier holding company would "allow corporations to effectively thwart the purposes of rate integration" and would "render the doctrine a nullity, thwarting Congressional intent."<sup>9</sup> Mariana contends with vigor that "GTE and its affiliated carriers frequently operate so closely that their identity is often indistinguishable, as demonstrated by the example of Micronesian Telecommunications Corporation [a GTE affiliate]."<sup>10</sup> Mariana argues that extending the rate integration rules to all affiliated carriers is a permissible reading of the Telecommunications Act,<sup>11</sup> and the Commission should protect the intended beneficiaries of rate integration by so interpreting the Act.<sup>12</sup>

We are sympathetic to the ultimate position taken by Mariana -- that its people should not be deprived of the benefits of rate integration (which were specifically guaranteed to them in the Act) by carriers playing games with corporate structure. U S WEST never suggested that all a carrier needed to do in order to avoid rate integration was to set up a new corporation. U S WEST's targeted stock structure is an immensely complex transaction which ensures independence between the two corporate groups, and no corporation would ever go to such lengths

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<sup>9</sup> Mariana at 6.

<sup>10</sup> Id. at 7.

<sup>11</sup> Id. at 2-4.

<sup>12</sup> Id. at 9.

in order to avoid rate integration. In fact, the targeted stock structure was put in place before the statutory obligation for rate integration was enacted.

U S WEST's Petition, upon grant, would present no opportunity for evasion of the rate integration rules, and would present no danger that the people of Mariana would lose the statutory benefits which rate integration would provide. Under the U S WEST Petition, corporate structures which were established in order to frustrate (or had the effect of frustrating) the rate integration rules would simply be ignored in applying those rules. Indeed, as AT&T points out, U S WEST agrees that all U S WEST Communication Group carriers are subject, as a group, to the rate integration rules, notwithstanding their corporate structure.<sup>13</sup> The dangers which form the basis of the Mariana opposition simply do not apply to the U S WEST Petition.

One additional point made by Mariana deserves attention. Mariana contends that the term "provider" of telecommunications is not defined in the Act, and that therefore the Commission has pretty much carte blanche to define provider in any manner which it sees fit.<sup>14</sup> U S WEST had pointed out in its Petition that the term "provider" was defined in Section 3(a)(49) of the Act as "coterminous" with the term "telecommunications carrier," because a telecommunications carrier was defined as a "provider of telecommunications services."<sup>15</sup> Mariana contends that this logic "by

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<sup>13</sup> AT&T at 2, n.1.

<sup>14</sup> Mariana at 2-4.

<sup>15</sup> Petition at 5.

extrapolation -- requires all providers to be carriers. This is an ancient and discredited logical fallacy similar to claiming that since a cathedral is a type of building, all buildings must necessarily be cathedrals.”<sup>16</sup>

While Mariana’s logical exposition is refreshing, its textual analysis is faulty. The statutory definition in question states that “any provider of telecommunications services” is a telecommunications carrier.<sup>17</sup> The use of the word “any” in the statutory definition of “telecommunications carrier” makes it clear that indeed all “providers of telecommunications services” are telecommunications carriers. Mariana’s description of the statute as permitting an interpretation to the effect that telecommunications carriers are merely one example of a number of providers of telecommunications services is simply contrary to the plain language of the statute itself.<sup>18</sup>

In summary, there has been no cogent reason presented as to why the rate integration rules should apply to the completely separate operations of U S WEST

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<sup>16</sup> Mariana at 3-4.

<sup>17</sup> Telecommunications Act, 110 Stat. at 60 § 3(a)(49) (emphasis supplied).

<sup>18</sup> See Blacks Law Dictionary, Fifth Edition, at 86, for a discussion of the use of the word “any” in a statute. Of course, as telecommunications services are carrier in nature (Telecommunications Act, 110 Stat. at § 3(a)(51)), it would seem that all providers of telecommunications services would necessarily become carriers even without the statutory definition.

Communications Group and U S WEST Media Group. U S WEST submits that its  
Petition should be granted.

Respectfully submitted,

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November 5, 1996

## **CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 5th day of November, 1996, I have caused a copy of the foregoing **U S WEST, INC.'S REPLY TO OPPOSITIONS TO PETITION FOR CLARIFICATION, OR, IN THE ALTERNATIVE, RECONSIDERATION** to be served via first-class United States Mail, postage prepaid upon the persons listed on the attached service list.



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